

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006

Chapter Seven

Technical Barriers to Trade

Objectives

The objectives of this Chapter are to increase and facilitate trade and obtain effective market access through the improvement of the implementation of TBT Agreement, the elimination of unnecessary, technical barriers to trade, and the enhancement of bilateral cooperation.

Article 7.1: Affirmation of the TBT Agreement

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 7.2: Scope and Coverage

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations, and conformity assessment procedures of central government bodies that may, directly or indirectly, affect trade in goods between the Parties,¹ including any amendment² thereto and any addition to their rules or the product coverage thereof, except amendments and additions of an insignificant nature.
2. Notwithstanding paragraph 1, this Chapter does not apply to:
 - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; and
 - (b) sanitary and phytosanitary measures.

Articles 7.3: Trade Facilitation

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify, develop and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors, taking into consideration the respective Parties experience in other bilateral, regional and multilateral agreements as appropriate. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with

¹ For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

² Any amendment includes elimination of technical regulations.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006

international standards, reliance on a supplier's declaration of conformity, and the recognition and acceptance of the results of conformity assessment procedures and use of accreditation to qualify conformity assessment bodies.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5, and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement) issued by the WTO Committee on Technical Barriers to Trade.

3. Where a Party detains at a port of entry a good originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

4. On request of another Party, a Party shall give favorable consideration to any sector-specific proposal the Party makes for further cooperation under this Chapter.

Article 7.4: Conformity Assessment

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in another Party's territory. For example:

- (a) the importing Party may rely on a supplier's declaration of conformity;
- (b) conformity assessment bodies located in the territory of two or more Parties may enter into voluntary arrangements to accept the results of each other's assessment procedures;
- (c) a Party may agree with another Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
- (d) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of another Party;
- (e) a Party may designate conformity assessment bodies located in the territory of another Party; and
- (f) a Party may recognize the results of conformity assessment procedures conducted in the territory of another Party.

The Parties shall intensify their exchange of information on these and other similar mechanisms.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of another Party, it shall, on request of that other Party, explain its reasons so that corrective action may be taken if necessary.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territories of the other Parties on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of another Party, it shall, on request of that other Party, explain the reasons for its decision so that corrective action may be taken if necessary.

4. Where a Party declines a request from another Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision.

Article 7.5: Technical Regulations

1. Where a Party provides that foreign technical regulations may be accepted as equivalent to a specific technical regulation of its own, and the Party does not accept a technical regulation of another Party as equivalent to that technical regulation, it shall, at the request of that other Party, explain the reasons for its decision. A Party seeking the acceptance of its technical regulation as equivalent should provide, as appropriate, information on the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party, the circumstances which gave rise to the adoption of its technical regulation and on the similarity of the established mechanisms of conformity assessment.

2. Where a Party does not provide that foreign technical regulations may be accepted as equivalent to its own, it shall, at the request of another Party, explain its reasons for not accepting that other Party's technical regulations as equivalent.

3. So as to inform other Parties with a possible interest in developing a similar technical regulation and to minimize duplicate expenses, at the request of a Party, a Party shall provide available information, studies or other documents, except for confidential business information and personal privacy information, on which a Party has relied in the development of a technical regulation.

Article 7.6: Transparency

1. Each Party shall allow persons of the other Parties to participate in the development of its standards, technical regulations, and conformity assessment procedures. Each Party shall permit

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006

persons of the other Parties to participate in the development of such measures on terms no less favorable than those accorded to its own persons and to persons of any other Party.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.
3. In order to enhance the opportunity for persons to be aware of proposals, to understand them and to provide meaningful comments on proposed technical regulations and conformity assessment procedures, a Party publishing the notice and making a notification under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement, shall:
 - (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
 - (b) transmit the proposal electronically to the other Parties through the inquiry points each Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

The Parties shall also publish and notify those technical regulations that agree with the technical content of the relevant international standards.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and other Parties to make comments in writing on the proposal. Upon request, a Party shall give favorable consideration to reasonable requests for extending the time allowed for comments.

4. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from persons or other Parties under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5. Where a Party makes a notification under Article 2.10, 3.2, 5.7 or 7.2 of the TBT Agreement, it shall at the same time transmit the notification electronically to the other Parties through the inquiry points referenced in paragraph 3(b).

The Parties shall also notify those technical regulations that agree with the technical content of the relevant international standards.

6. Each Party shall, on request of another Party, provide information regarding the objectives of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

7. Each Party will implement this Article as soon as is practicable and under no circumstance later than three years, from the date of entry into force of this Agreement.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006

Article 7.7: Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, as set out in Annex 7.7.
2. The Committee's functions shall include:
 - (a) monitoring the implementation and administration of this Chapter;
 - (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
 - (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement, in coordination with the Committee on Trade Capacity Building, as appropriate;
 - (d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the territories of two or more Parties;
 - (e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
 - (f) at a Party's request, consulting on any matter arising under this Chapter;
 - (g) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments;
 - (h) taking any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade;
 - (i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter;
 - (j) establishing, if necessary, for particular issues or sectors, working groups for the treatment of specific matters related with the Chapter and the TBT agreement; and

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006

- (k) exchanging information, at a Party's request, on their respective views on third-party issues concerning standards, technical regulations and conformity assessment procedures so as to foster a common approach to their resolution.
3. When consultations are requested under 2 (f), the Parties shall make every effort to attain a mutually satisfactory solution, within a sixty (60) day period.
4. Where two or more Parties have had recourse to consultations under paragraph 2(f) such consultations shall, constitute consultations under Article 21.4 (Consultations).
5. The Committee shall meet at least once a year unless the Parties otherwise agree. The Committee shall carry out its work through the communication means agreed by the Parties, such as Internet, videoconferences or others
6. All decisions of the Committee shall be taken by consensus unless the Committee decides otherwise.

Article 7.8: Information Exchange

1. Any information or explanation that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable time. A Party shall endeavor to respond to each such request within 60 days.
2. As concerns information exchange, in compliance with Article 10 under the WTO's TBT Agreement, the Parties shall apply the recommendations included in the document on Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev. 8, 23 May 2002, Section IV (Procedure for information exchanges) as transmitted by the WTO Committee on Technical Barriers to Trade.

Article 7.9: Definitions

For purposes of this Chapter:

central government body, conformity assessment procedures, standard, and technical regulation shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

TBT Agreement means the *WTO Agreement on Technical Barriers to Trade*.

**Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 6 January 2006**

Annex 7.7

Committee on Technical Barriers to Trade

The Committee on Technical Barriers to Trade shall be coordinated by:

- (a) in the case of Peru, the *Ministerio de Comercio Exterior y Turismo*; and
 - (b) in the case of the United States, the Office of the U.S. Trade Representative,
- or their successors.